

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Applications of )
Comm Systems, LLC ) File Nos. 0002144710, 0002145861, 0002145865,
) 0002145868, 0002145871, 0002145874, 0002145877,
) 0002145881, 0002145884, 0002145888, 0002145891,
) 0002145895, 0002145898, 0002145901, 0002145904,
) 0002145907, 0002145910, 0002145913, 0002145917,
) 0002145920, 0002146009, 0002146012, 0002146015,
) 0002146019, 0002146027, 0002146030, 0002146036,
) 0002146176, 0002146179, 0002146500, 0002146504,
) 0002181773, and 0002182415
)
MDS Investments, Inc. ) File Nos. 0002151735, 0002151737, 0002151739,
) 0002151740, 0002151741, 0002151742, 0002151743,
) 0002151745, 0002151746, 0002151747, 0002151748,
) 0002151749, and 0002153150
)
Oak Lands Development, LLC ) File Nos. 0002145862, 0002145866, 0002145869,
) 0002145872, 0002145875, 0002145879, 0002145882,
) 0002145885, 0002145889, 0002145892, 0002145896,
) 0002145899, 0002145902, 0002145905, 0002145908,
) 0002145911, 0002145914, 0002145918, 0002145921,
) 0002146010, 0002146013, 0002146017, 0002146020,
) 0002146022, 0002146028, 0002146032, 0002146037,
) 0002146177, 0002146180, 0002146501, 0002146506,
) 0002181774, and 0002182416
)
Third District Development, LLC ) File Nos. 0002145864, 0002145867, 0002145870,
) 0002145873, 0002145876, 0002145880, 0002145883,
) 0002145886, 0002145890, 0002145894, 0002145897,
) 0002145900, 0002145903, 0002145906, 0002145909,
) 0002145912, 0002145915, 0002145919, 0002145923,
) 0002146011, 0002146014, 0002146018, 0002146021,
) 0002146023, 0002146029, 0002146035, 0002146038,
) 0002146178, 0002146181, 0002146503, 0002146510,
) 0002181776, 0002182148, and 0002286108

Order

Adopted: November 28, 2012

Released: November 28, 2012

By the Assistant Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, we dismiss the 113 above-captioned applications filed by Comm Systems, LLC (Comm Systems), MDS Investments, Inc. (MDS), Oak Lands Development, LLC (Oak Lands), and Third District Development, LLC (Third District) (collectively, Applicants). James A. Kay, Jr. (Kay)

owns and controls Comm Systems, Oak Lands, and Third District, and Marc D. Sobel (Sobel) owns and controls MDS. The applications seek authority to operate stations in the 800 MHz band in Southern California, and were filed in May, June, and August 2005, during the pendency of various appeals in the license revocation proceedings against Kay and Sobel. On June 2, 2005, Nextel Communications, Inc. (Nextel) filed a petition to dismiss or deny 105 of the applications.<sup>1</sup> Applicants filed an opposition on June 21, 2005,<sup>2</sup> and Nextel replied on June 30, 2005.<sup>3</sup> For the following reasons, we grant Nextel's petition and dismiss all of the applications as defective.

## II. BACKGROUND

2. Kay and Sobel have provided service in the Los Angeles, California area on a commercial basis for many years. Both have operated and maintained Ultra-High Frequency (UHF) (450 MHz and 470-512 MHz) as well as 800 MHz Specialized Mobile Radio (SMR) stations. In the mid-1990's, upon receiving a number of complaints regarding the construction and operation of Kay's licensed facilities, the Commission instituted a proceeding to revoke 152 licenses held by Kay.<sup>4</sup> The licenses were authorized in both the UHF and 800 MHz SMR services. In 1997, the Commission instituted a related proceeding to revoke 28 licenses held by Sobel, also authorized in both the UHF and 800 MHz SMR services.<sup>5</sup> In the Sobel license revocation proceeding, the Commission further designated for hearing eight pending UHF and five pending 800 MHz applications, and five pending finder's preference requests in the 800 MHz service, all filed by Sobel.<sup>6</sup>

3. In companion decisions issued on January 25, 2002, the Commission ordered that all of Kay's and Sobel's 800 MHz licenses be revoked on findings that they had transferred control of Sobel's 800 MHz licenses to Kay without authority to do so, and had lacked candor toward the Commission.<sup>7</sup> In

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<sup>1</sup> Petition to Dismiss or Deny, filed by Nextel Communications, Inc. (June 2, 2005) (Petition). The Petition seeks dismissal of the 105 applications filed on May 3, 6, and 9, 2005.

<sup>2</sup> Opposition to Petition to Dismiss or Deny, filed by Comm Systems, LLC, MDS Investments, Inc., Oak Lands Development, LLC, and Third District Development, LLC (June 21, 2005) (Opposition). The Opposition includes seven additional applications not referenced in the Petition. The applications, FCC File Nos. 0002144710, 0002181773, 0002181774, 0002181776, 0002182415, 0002182416, and 0002182148, were filed on May 2, 2005, and June 1, 2005. On our own motion, we also include FCC File No. 0002286108, filed by Third District Development, LLC on August 22, 2005. Applicants filed a motion on June 15, 2005, seeking an extension of three business days beyond the filing deadline, to June 20, 2005, to submit their Opposition. Motion for Extension of Time, filed by Comm Systems, LLC, MDS Investments, Inc., Oak Lands Development, LLC, and Third District Development, LLC (June 15, 2005). Applicants, however, filed their Opposition one day later, on June 21, 2005. Because Nextel agreed to additional time, Motion at 2, and so that we can address all arguments presented in this proceeding, we extend the deadline for filing Applicants' Opposition.

<sup>3</sup> Reply to Opposition to Petition to Dismiss or Deny, filed by Nextel Communications, Inc. (June 30, 2005).

<sup>4</sup> James A. Kay, Jr. Licensee of One Hundred Sixty Four Part 90 Licenses in the Los Angeles, California Area, *Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture*, 10 FCC Rcd 2062 (1994), *modified*, 11 FCC Rcd 5342 (1996).

<sup>5</sup> Marc Sobel Applicant for Certain Part 90 Authorizations in the Los Angeles Area and Requestor of Certain Finder's Preferences; Marc Sobel and Marc Sobel d/b/a Airwave Communications Licensees of Certain Part 90 Stations in the Los Angeles Area, *Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture*, 12 FCC Rcd 3298 (1997), *modified*, FCC 97M-82 (rel. May 8, 1997).

<sup>6</sup> *Id.*

<sup>7</sup> James A. Kay, Jr. Licensee of One Hundred Fifty Two Part 90 Licenses in the Los Angeles, California Area, *Decision*, 17 FCC Rcd 1834 (2002), *recon. granted in part and denied in part*, 17 FCC Rcd 8554 (2002) (*Kay Decision*); Marc Sobel Applicant for Certain Part 90 Authorizations in the Los Angeles Area and Requestor of Certain Finder's Preferences; Marc Sobel and Marc Sobel d/b/a Airwave Communications Licensee of Certain Part 90 Stations in the Los Angeles Area, *Decision*, 17 FCC Rcd 1872 (2002), *recon. denied*, 17 FCC Rcd 8562

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addition, the Commission denied Sobel's five pending applications for 800 MHz licenses and his five pending finder's preference requests in the 800 MHz service.<sup>8</sup> The Commission determined that the misconduct in both proceedings involved only stations operating in the 800 MHz band. Rather than altogether disqualifying Kay and Sobel as licensees, the Commission found that the loss of Kay's and Sobel's interests involving the 800 MHz band would serve as a significant deterrent to future misconduct.<sup>9</sup>

4. In each of the 2002 decisions, the Commission also authorized Kay and Sobel to continue operating the stations, for which licenses had been revoked, for 90 days unless the parties sought reconsideration or judicial review of the action revoking the licenses.<sup>10</sup> In the event they sought review, the Commission authorized Kay and Sobel to operate the stations until final disposition of all administrative and judicial appeals.<sup>11</sup> Kay and Sobel, in fact, appealed the Commission's decisions. On February 1, 2005, however, the Court of Appeals for the District of Columbia Circuit affirmed the revocation orders and denied rehearing on April 5, 2005.<sup>12</sup> The following month, the Court granted a stay of its mandate pending Kay's and Sobel's appeal to the Supreme Court. On October 3, 2005, the Supreme Court denied review of the revocation orders,<sup>13</sup> and on December 5, 2005, the Court of Appeals denied a motion for further stay of its mandate and issued the mandate.<sup>14</sup>

5. Once the Court of Appeals affirmed the Commission's revocation orders and denied rehearing in 2005, and while the Supreme Court appeal was pending, Kay and Sobel initiated a double-pronged effort to retain licensing authority sufficient to continue operating the facilities they used to provide service in Southern California on the 800 MHz frequencies revoked by the Commission. In August 2005, Kay and Sobel filed a Motion to Modify Sanctions, in which they asked the Commission to rescind the license revocations and substitute an alternative set of sanctions that they proposed. On April 12, 2010, the Commission denied the motion.<sup>15</sup> Upon rejecting the Motion to Modify Sanctions, the Commission further directed Kay and Sobel to cease operating their stations no later than 11 days after release of its order.<sup>16</sup> On April 23, 2010, to implement that decision, the Wireless Telecommunications Bureau (Bureau) performed the administrative task of updating the Commission's Universal Licensing System (ULS) to reflect the cancellation of the licenses at issue.<sup>17</sup> On April 21, 2010, two days before the

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(2002), *further recon. denied*, 19 FCC Rcd 801 (2004) (*Sobel Decision*). The Commission also found that Kay failed to meet his responsibilities as a licensee when he acted in a recalcitrant manner in violation of Section 308(b) of the Communications Act, as amended, resulting in the imposition of a \$10,000 forfeiture. *Kay Decision*, 17 FCC Rcd at 1850, ¶ 50, and 1864, ¶ 100.

<sup>8</sup> *Sobel Decision*, 17 FCC Rcd at 1893-94, ¶ 80.

<sup>9</sup> *Kay Decision*, 17 FCC Rcd at 1865, ¶ 101; *Sobel Decision*, 17 FCC Rcd at 1893-94, ¶ 80.

<sup>10</sup> *Kay Decision*, 17 FCC Rcd at 1866, ¶ 109; *Sobel Decision*, 17 FCC Rcd at 1895, ¶ 90.

<sup>11</sup> *Id.* In practice, Kay and Sobel were required to file motions to extend operating authority for each license to continue operating the stations during the appeals process.

<sup>12</sup> *Kay v. FCC*, 396 F.3d 1184 (D.C. Cir. 2005).

<sup>13</sup> *Kay v. FCC*, 546 U.S. 871, 126 S. Ct. 176 (2005).

<sup>14</sup> *Kay v. FCC*, No. 02-1175 (D.C. Cir. Dec. 5, 2005).

<sup>15</sup> James A. Kay, Jr. and Marc Sobel, *Memorandum Opinion and Order*, 25 FCC Rcd 4068 (2010) (*April 12 Order*).

<sup>16</sup> *Id.* at 4070-71, ¶ 9.

<sup>17</sup> One week later, on April 30, 2010, the Bureau also dismissed all applications associated with the revoked licenses.

licenses were cancelled in ULS, Kay and Sobel filed a petition for reconsideration of the April 12, 2010 order and a motion for stay of that order pending a decision on the petition.

6. On June 2, 2010, the Commission dismissed the April 21 petition for reconsideration as repetitious, and, in light of that disposition, dismissed as moot the motion for stay.<sup>18</sup> In the June 2 order, the Commission also “direct[ed] the Enforcement Bureau to ensure that Kay and Sobel in fact have desisted from using their formerly licensed frequencies.”<sup>19</sup> Kay and Sobel appealed the 2010 decisions, but the Court of Appeals dismissed the case on jurisdictional grounds in October 2010,<sup>20</sup> and on May 23, 2011, the Supreme Court once again denied review.<sup>21</sup>

7. Also in 2005, while the first Supreme Court appeal was pending, Kay and Sobel submitted the 113 applications at issue in this proceeding also in an effort to retain licensing authority over their revoked 800 MHz frequencies. As the Attachment to this Order shows, between May 2 and 9, 2005, Applicants filed 106 applications, and on June 1, 2005, Kay’s companies filed an additional six applications.<sup>22</sup> On August 22, 2005, Third District filed the remaining application at issue in this proceeding.

### III. DISCUSSION

8. As already explained, the Commission rejected Kay’s and Sobel’s efforts in 2005, to retain licensing authority over revoked 800 MHz frequencies by denying their Motion to Modify Sanctions. We now dismiss the 113 applications filed in 2005, because the applications were prematurely filed in violation of Section 1.937 of the Commission’s rules, which prohibits the filing of repetitious applications. In particular, Section 1.937(a) prohibits the filing of “like or new” applications involving services of the same kind to substantially the same area by substantially the same applicant previously authorized under a revoked license until 12 months after the effective date of final Commission action.<sup>23</sup> As explained below, each application seeks to provide service in the 800 MHz band from the same locations, on the same frequencies, using the same facilities formerly authorized under Kay’s and Sobel’s revoked 800 MHz SMR licenses. In addition, the applications would have been filed in a timely manner under Section 1.937 only if the effective date of the Commission’s final action in the revocation proceedings occurred prior to May, June, or August 2004 – one year before Comm Systems, MDS, Oak Lands and Third District filed the applications. The effective date of final Commission action in this proceeding, however, occurred after August 2004.

9. First, for purposes of Section 1.937(a), we find that Comm Systems, MDS, Oak Lands, and Third District are “substantially the same applicant[s]” as the licensees of Kay’s and Sobel’s revoked licenses. In particular, where the Commission has revoked a license, Section 1.937(a) prohibits the filing

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<sup>18</sup> James A. Kay, Jr. and Marc Sobel, *Second Memorandum Opinion and Order*, 25 FCC Rcd 7639 (2010) (*June 2 Order*). While the Commission dismissed the petition as repetitious, it further explained that if the petition had not been procedurally defective, it would have denied it on the merits. *Id.* at 7639, ¶ 1.

<sup>19</sup> *Id.* at 7642, ¶ 10.

<sup>20</sup> *Kay and Sobel v. FCC*, Case No. 10-1155 (Order of Oct. 19, 2010).

<sup>21</sup> *Kay v. FCC*, 131 S. Ct. 2913 (2011).

<sup>22</sup> On June 1, 2005, Kay also amended 15 other applications, changing the proposed service from conventional Business Radio (GB) to trunked Business Radio (YB).

<sup>23</sup> 47 C.F.R. § 1.937(a). Section 1.937(a) provides “[w]here the Commission has, for any reason, dismissed with prejudice or denied any license application in the Wireless Radio Services, or revoked any such license, the Commission will not consider a like or new application involving service of the same kind to substantially the same area by substantially the same applicant, its successor or assignee, or on behalf of or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of final Commission action.” *Id.*

of any application “by substantially the same applicant, its successor or assignee, or on behalf of or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of final Commission action.”<sup>24</sup> In this case, James A. Kay, Jr. was the licensee for 33 of his 34 revoked 800 MHz licenses, and Kay owns and controls Buddy Corp., the licensee of Kay’s “34<sup>th</sup>” revoked license.<sup>25</sup> Furthermore, Sobel owns and controls MS Airwaves, Inc., the licensee of Sobel’s 13 revoked 800 MHz licenses.<sup>26</sup> As explained in the Opposition, Kay owns and controls three of the Applicants, Comm Systems, Oak Lands, and Third District, and Sobel owns and controls the fourth Applicant, MDS.<sup>27</sup> We conclude that the applications were clearly filed on behalf of or for the benefit of Kay and Sobel, the original parties in interest of the revoked 800 MHz SMR licenses.

10. We further find that the applications involve service of the same kind in substantially the same area as that previously authorized under the revoked licenses. In fact, Applicants acknowledge that the “applications specify base station frequencies on the existing channel pairs at most of the primary sites” authorized under their 800 MHz SMR licenses at the time they filed the applications, but contend the applications “fall substantially short of duplicating the existing authority of either licensee.”<sup>28</sup> Applicants argue that the applications do not fully duplicate the existing systems because they do not propose to use the “full compliment of currently authorized base station locations” and they do not propose the “full number of authorized mobiles.”<sup>29</sup> Applicants therefore conclude that because the applications do not “fully duplicate” the revoked licenses, they must be processed.<sup>30</sup> We disagree. By its plain language, Section 1.937(a) imposes a 12-month suspension period after the effective date of final Commission action on the filing of applications involving the same kind of service in substantially the same area as a revoked license. The rule does not require an application to propose identical service in identical areas previously authorized under a revoked license to trigger the 12-month period.

11. As the Attachment to this Order shows, Kay’s three companies, Comm Systems, Oak Lands, and Third District each filed 33 applications for community repeater licenses<sup>31</sup> with the

<sup>24</sup> *Id.*

<sup>25</sup> The 33 “James A. Kay, Jr.” revoked licenses were for Stations WNIZ676, WNJA910, WNJL306, WNKV762, WNMT755, WNNY402, WNNY773, WNPJ874, WNSK552, WNVL794, WNVW779, WNWB268, WNWB332, WNWK982, WNWN703, WNWQ651, WNXB280, WNXG372, WNXQ353, WNXQ911, WNXS450, WNXS753, WNXW280, WNXW327, WNXW549, WNYQ437, WNYR747, WNZY505, WNZZ731, WPAP683, WPAZ639, WPBW517, and WPBZ518. The Buddy Corp. revoked license was for Station WNXW487.

<sup>26</sup> The 13 “MS Airwaves, Inc.” licenses revoked were for Stations KNBT299, KRU576, WNPY680, WNWB334, WNLX471, WNYR424, WPAD685, WPCA891, WPCG780, WPCZ354, WPDB603, WPF529, and WPFH460.

<sup>27</sup> Opposition at 2.

<sup>28</sup> *Id.* at 3, n.7.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Mobile relay stations provide what is commonly called repeater service for Private Land Mobile Radio (PLMR) systems. As the Commission has previously explained, most PLMR communication systems employ mobile relays (repeaters) with wide-area coverage so that communication may be maintained between mobile units that otherwise would be out of range of one another. Amendment of Part 90 of the Commission’s Rules, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 25 FCC Rcd 2479, 2484-85, ¶ 14 (2010) (citing *id.*, *Notice of Proposed Rulemaking and Order*, 22 FCC Rcd 9595, 9599, ¶ 10 (2007)) (*Part 90 Second Report and Order*). It is common practice for an entity that owns and operates a repeater to share the base station with a number of other users. *Id.*; Amendment of Parts 89, 91, 93, and 95 of the Commission’s Rules to Adopt New Practices and Procedures for Cooperative Use and Multiple Licensing of Stations in the Private Land Mobile Radio Services, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 24 F.C.C. 2d 510, 513, ¶ 13 (1970). This sharing is referred to as “multiple licensing,” 47 C.F.R. § 90.185, and the mobile relay station is commonly called a “community repeater.” Under the multiple licensing concept, each user of the community repeater applies for and

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explanation that each application is seeking authority for “an ‘add-on’ community repeater facility to be functionally integrated” with one of Kay’s 33 revoked licenses.<sup>32</sup> More specifically, Kay’s companies filed 99 applications, where, in practice, each application is “functionally integrated” in terms of seeking authority for community repeater service from the same locations and on the same frequencies using the same facilities previously authorized under one of Kay’s revoked licenses.<sup>33</sup> MDS filed the remaining 13 applications for community repeater licenses, and each similarly seeks authority to operate from the same locations and on the same frequencies using the same facilities previously authorized under each of Sobel’s 13 revoked 800 MHz licenses.<sup>34</sup> While almost all of the community repeater applications propose using the same locations and same frequencies previously authorized on a single revoked license, a few applications combine locations and frequencies previously authorized on more than one revoked license.<sup>35</sup> In all cases, however, each location and each frequency proposed in an application was previously authorized on at least one of Kay’s or Sobel’s revoked 800 MHz SMR licenses.

12. We further find in this proceeding that the SMR service Kay and Sobel offered under their revoked licenses and the type of Business Radio service they propose in their applications involve the “same kind of service” for purposes of Section 1.937(a). In particular, Kay and Sobel provided repeater service from their revoked 800 MHz SMR mobile relay stations,<sup>36</sup> and are now seeking authority

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obtains an individual license for the station. Thus, a single base station is licensed to multiple users. *Part 90 Second Report and Order*, 25 FCC Rcd at 2484-85, ¶ 14.

<sup>32</sup> For example, File Nos. 0002145861 (Comm Systems), 0002145862 (Oak Lands), and 0002145863 (Third District) each seek authority for “an ‘add-on’ community repeater facility to be functionally integrated with station WNVW779,” one of Kay’s revoked licenses.

<sup>33</sup> Again, for example, File Nos. 0002145861 (Comm Systems), 0002145862 (Oak Lands), and 0002145863 (Third District) each seek authority for community repeater service from six locations, including Santiago Peak in Orange County, and Sunset Peak, Mount Lukens, Mount Wilson, and two sites on Johnstone Peak in Los Angeles County, California. The applications propose to operate on frequency 852.9875 MHz at each of those locations. Before the license for Station WNVW779 was revoked, Kay was authorized under that license to provide SMR mobile relay (repeater) service at the same six locations on the same 800 MHz frequency at each location.

<sup>34</sup> Like the Kay company applications, each MDS application includes a public interest statement explaining that the application is seeking authority for “an ‘add-on’ community repeater facility to be functionally integrated” with one of Sobel’s revoked licenses. For example, MDS’s File No. 0002151735 seeks authority for “an ‘add-on’ community repeater facility to be functionally integrated with station KNTB299,” one of Sobel’s revoked licenses. The application seeks authority for community repeater service from two locations, Santiago Peak and Sierra Peak in Orange County, on frequency 851.1125 MHz. Before the license for Station KNTB299 was revoked, Sobel was authorized under that license to provide SMR mobile relay (repeater) service at the same locations on the same 800 MHz frequency.

<sup>35</sup> For example, application File Nos. 0002182148 (Third District), 0002182415 (Comm Systems), and 0002182416 (Oak Lands) state in attached public interest statements that each application would be functionally integrated with Station WNJA910, one of Kay’s revoked licenses. The applications, however, also propose frequencies previously authorized on two other revoked Kay licenses, WPAZ639 and WPBW517. In addition, while the revoked license for Station WNJA910 previously authorized 800 MHz mobile relay service at two locations, Oat Mountain and Rasnow Peak, the three pending applications only propose service at one location, Oat Mountain. In another example, Third District’s application File No. 0002286108 proposes mobile relay operations at locations and on frequencies previously authorized under several of Kay’s revoked licenses, including WNJL306, WNPJ874, WNMV402, WNXW487, WNXW327, WNKV762, and WNJA910.

<sup>36</sup> See James A. Kay, Jr. Licensee of One Hundred Fifty Two Part 90 Licenses in the Los Angeles, California Area, *Initial Decision of Chief Administrative Law Judge Joseph Chachkin*, FCC 99D-04, 1999 WL 700534, ¶ 91 (rel. Sept. 10, 1999) (describing Kay’s business operations as “providing repeater service to end users on a commercial basis acting as a ‘private carrier’ with respect to UHF stations or as an ‘SMR’ with respect to 800 MHz stations”). Judge Chachkin further explained that Sobel was involved in the land mobile radio business in the Los Angeles area before Kay, but that he became interested in obtaining authorizations for 800 MHz facilities in the

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to use those same facilities for community repeater service on the same frequencies and at the same locations as previously authorized under those revoked licenses. Applicants argue, however, that the revoked authorizations were “for conventional or trunked SMR stations (GX/FB2 or YX/FB2) with full commercial authority,” and that “[t]he facilities proposed in the ... applications are for community repeater authorizations (GB/FB4 or YB/FB4) with substantial restrictions on the extent to which they may be used for commercial service.”<sup>37</sup> Applicants therefore conclude that “the scope of authority sought in the ... applications is significantly narrower” than that authorized under the 800 MHz licenses held by Kay and Sobel at the time they filed the applications.<sup>38</sup>

13. Again, Section 1.937(a) does not require that the service proposed in an application be identical to that previously authorized under a revoked license to trigger the 12-month suspension period. Commission rules allow SMR licensees to use their 800 MHz frequencies to provide mobile relay (repeater) service to entities to support those entities’ internal communications needs.<sup>39</sup> Similarly, entities engaged in the operation of a commercial activity may use mobile relay stations for community repeater service on 800 MHz frequencies allocated to the Industrial/Business Pool also to support those entities’ internal communications needs.<sup>40</sup> Whether SMR or Business Radio, the service Kay and Sobel previously offered and now seek to employ is repeater service to support an entity’s internal communications needs by providing wide-area coverage so that communication among the entity’s mobile units that otherwise would be out of range of one another may be maintained. We further note that, if we were to grant the applications, Commission rules would allow Kay and Sobel to later modify their licenses to authorize use of the Business Radio channels for commercial SMR operations.<sup>41</sup>

14. Finally, we find in this proceeding that Comm Systems, MDS, Oak Lands, and Third District filed the applications prior to the effective date of final Commission action in the Kay and Sobel revocation proceedings. As already explained, Section 1.937 precludes the filing of repetitious applications until 12 months after the effective date of final Commission action. Thus, for the applications at issue in this case to have been filed in a timely manner, the effective date of final Commission action in the revocation proceedings would have had to occur prior to May, June, and August 2004 – one year before Comm Systems, MDS, Oak Lands, and Third District filed the applications.

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early 1990’s. *Id.* at ¶ 143. Prior to that time, Sobel’s repeaters were operated in the UHF bands (450 MHz and 470-512 MHz). *Id.*

<sup>37</sup> Opposition at 3, n.7.

<sup>38</sup> *Id.*

<sup>39</sup> Applications for LMR Systems, Inc., *Order*, 14 FCC Rcd 17227, 17235, ¶ 15 (WTB PSPWD 1999) (citing 47 C.F.R. § 90.603(c)) (*LMR Systems*). Section 90.603 provides that the following persons are eligible for licensing in the 800 MHz bands, ... including “(c) [a]ny person eligible under this part and proposing to provide on a commercial basis base station an[d] ancillary facilities as a Specialized Mobile Radio Service System operator, for the use of individuals, federal government agencies and persons eligible for licensing under subparts B or C of this part.” 47 C.F.R. § 90.603(c).

<sup>40</sup> See 47 C.F.R. § 90.35(a)(1) (providing that “[p]ersons primarily engaged in any of the following activities are eligible to hold authorizations in the Industrial/Business Pool to provide commercial mobile radio service as defined in part 20 of this chapter or to operate stations for transmission of communications necessary to such activities of the licensee: (1) the operation of commercial activity; (2) the operation of educational, philanthropic, or ecclesiastical institutions; (3) Clergy activities; or (4) The operation of hospitals, clinics, or medical associations”).

<sup>41</sup> See 47 C.F.R. § 90.621(e) (providing that “licensees of channels in the Business/Industrial/Land Transportation category may request a modification of the license, ..., to authorize commercial operation).

15. While there is limited precedent addressing the date on which Section 1.937's 12-month suspension period would begin, the Commission's 2002-2003 rulemaking proceeding revising that rule section offers guidance. As originally adopted, Section 1.937 specified certain types of applications that were prohibited as repetitious, *i.e.*, applications for new stations, or for modification of services or facilities, or for licenses that had been revoked.<sup>42</sup> The Commission instituted its rulemaking proceeding after finding the rule's original language could be interpreted as permitting the filing of repetitious applications that were not specified in the rule, including, for example, renewal applications.<sup>43</sup>

16. In its discussion on the issue, the Commission noted that because Section 1.937 could be interpreted as permitting the filing of repetitious applications that were not specified in the original language of the rule, in at least one instance, a licensee – Herbert L. Schoenbohm – had filed a repetitious application for the same service less than 12 months after the denial of his renewal application.<sup>44</sup> In the *Schoenbohm* proceeding, the licensee filed a renewal application on February 2, 1994, the Commission held a hearing on the application on August 8, 1995, and on February 2, 1996, the Administrative Law Judge (ALJ) issued his Initial Decision denying Schoenbohm's renewal application.<sup>45</sup> On October 9, 1997, upon remand, the ALJ issued a Supplemental Initial Decision (SID) again denying the renewal application.<sup>46</sup>

17. In affirming the SID on July 8, 1998, the Commission authorized continued operation of Schoenbohm's station until "the ninety-first day following the release date of an order on reconsideration or the completion of judicial review, whichever is later."<sup>47</sup> The Commission denied reconsideration of its denial of Schoenbohm's renewal application on October 9, 1998.<sup>48</sup> The Court of Appeals affirmed the Commission's denial of Schoenbohm's renewal application on February 9, 2000, and denied rehearing on June 28, 2000.<sup>49</sup> The Supreme Court denied review on October 30, 2000,<sup>50</sup> and, in accordance with the Commission's July 8, 1998 order, Schoenbohm's authority to operate his station expired 90 days later, on January 28, 2001.

18. Two months after his operating authority expired, on April 4, 2001, Schoenbohm filed a repetitious renewal application. Because the language of Section 1.937 did not, at that time, expressly prohibit the filing of repetitious renewal applications, the Commission designated Schoenbohm's April 4, 2001 renewal application for hearing, noting that "although the Supreme Court denied certiorari on October 30, 2000, the Commission gave Mr. Schoenbohm 90 days thereafter in which to effect the

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<sup>42</sup> Amendment of Section 1.937 of the Commission's Rules Concerning Repetitious or Conflicting Applications, *Report and Order*, 18 FCC Rcd 7190, 7192, ¶ 4 (2003) (*Section 1.937 Report and Order*).

<sup>43</sup> *Id.*

<sup>44</sup> *Section 1.937 Report and Order*, 18 FCC Rcd at 7192, ¶ 4 (citing *id.*, *Notice of Proposed Rulemaking*, 17 FCC Rcd 5628, 5630, ¶ 3 (2002) (citing *In the Matter of Application of Herbert L. Schoenbohm for a Station License in the Amateur Radio Service and Application of Herbert L. Schoenbohm for a General Class Operator License in the Amateur Radio Service, Hearing Designation Order*, 17 FCC Rcd 1369 (2002) (*2002 Schoenbohm HDO*)).

<sup>45</sup> *In the Matter of the Application of Herbert L. Schoenbohm Kingshill, Virgin Islands, Initial Decision of Administrative Law Judge Edward Luton*, 11 FCC Rcd 1146 (1996).

<sup>46</sup> *Id.*, *Supplemental Initial Decision of Administrative Law Judge Edward Luton*, 13 FCC Rcd 1853 (1997).

<sup>47</sup> *In re Applications of Herbert L. Schoenbohm, Kingshill, Virgin Islands, Decision*, 13 FCC Rcd 15028, 15037, ¶ 29 (1998). The Commission further explained that "[j]udicial review is completed when the forum which had jurisdiction to review this proceeding issues its mandate." *Id.*

<sup>48</sup> *Id.*, *Order*, 13 FCC Rcd 23774 (1998).

<sup>49</sup> *Schoenbohm v. FCC*, 204 F.3d 243 (2000), *rehearing en banc denied* (May 2, 2000), *as amended* (June 28, 2000).

<sup>50</sup> *Schoenbohm v. FCC*, 531 U.S. 968 (Oct. 30, 2000).

orderly cessation of his station operations. Hence, Mr. Schoenbohm retained his operating privileges until January 28, 2001, when his license cancelled, and only a little more than 2 months later filed his application for new station and operator licenses.”<sup>51</sup> Given the timeline in the *Schoenbohm* case and the Commission’s characterization of that case in its Section 1.937 rulemaking proceeding as a case where the licensee filed a repetitious renewal application less than 12 months after the denial of his renewal application, it is clear the Commission concluded that the effective date of final Commission action under Section 1.937 in *Schoenbohm* occurred after April 4, 2000, one year before Schoenbohm filed his repetitious renewal application and several years after the Commission affirmed the ALJ’s denial of the initial renewal application.

19. In this case, we need not determine the precise date on which final Commission action became effective because all of the potential events that would trigger the 12-month suspension period under Section 1.937(a) occurred after August 2004. In particular, the Court of Appeals affirmed the Commission’s revocation orders in February 2005, the Supreme Court denied review in October 2005, and the Court of Appeals issued its mandate on December 5, 2005. We note that Kay and Sobel themselves have acknowledged that the revocation orders “will become effective on either October 28, 2005,” the deadline for seeking rehearing of the Supreme Court’s denial of certiorari, “or on the date the Court of Appeals issues its mandate, whichever comes later.”<sup>52</sup> In addition, the Commission denied Kay’s and Sobel’s Motion to Modify Sanctions on April 12, 2010, and denied reconsideration of that decision on June 2, 2010. Upon appeal of those 2010 orders, the Court of Appeals once again denied review in October 2010, and on May 23, 2011, the Supreme Court also once again denied review.

20. We further note that, in its 2002 decisions, the Commission allowed Kay and Sobel to continue operating their 800 MHz SMR stations during the appeals processes. In fact, the Commission authorized Kay and Sobel to operate the stations until April 23, 2010, when the Commission finally directed the licensees to cease operations and cancelled the licenses in ULS.<sup>53</sup> We note that the Commission’s characterization of the *Schoenbohm* case as a case where the licensee filed his repetitious renewal application within 12 months of the effective date of final Commission action, *i.e.*, “a little more than 2 months” after he lost his operating authority on January 28, 2001, suggests the effective date of final Commission action in this proceeding would be April 23, 2010. Accordingly, we conclude that under Section 1.937(a), the effective date of final Commission action in the Kay and Sobel revocation proceedings occurred after May, June, and August 2004. The applications filed in May, June, and August 2005, involving the same kind of service to substantially the same areas as that provided under the revoked licenses were therefore prematurely filed in violation of Section 1.937(a) of the Commission’s rules.

21. Moreover, once the Commission revoked Kay’s and Sobel’s 800 MHz licenses, the SMR spectrum associated with those licenses automatically reverted to Nextel of California, Inc. Section 90.173(n) of the Commission’s rules provides that “[a]ny recovered channels in the 800 MHz SMR service will revert automatically to the holder of the EA license within which such channels are included. If there is no EA licensee for recovered channels, such channels will be retained by the Commission for future licensing.”<sup>54</sup> In this case, Nextel of California, Inc. holds EA licenses authorized on all of the SMR

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<sup>51</sup> 2002 *Schoenbohm HDO*, 17 FCC Rcd at 1371, n.15.

<sup>52</sup> Motion for Extension of Operating Authority, filed by James A. Kay, Jr. and Marc D. Sobel in WT Docket Nos. 94-17 and 97-56 at 2, ¶ 2 (Oct. 17, 2005).

<sup>53</sup> *April 12 Order*, 25 FCC Rcd at 4070-71, ¶¶ 7 and 9.

<sup>54</sup> 47 C.F.R. § 90.173(n); *see id.* § 90.683(b) (providing that “[i]n the event that the authorization for a previously authorized co-channel station within the EA licensee’s spectrum block is terminated or revoked, the EA licensee’s co-channel obligations to such station will cease upon deletion of the facility from the Commission’s official

(continued....)

frequencies previously authorized under Kay's and Sobel's 800 MHz licenses.<sup>55</sup> As a result, that spectrum automatically reverted to Nextel of California, Inc. once Kay and Sobel were no longer authorized to operate on those channels. While the majority of frequencies previously authorized under Kay's and Sobel's revoked licenses were SMR frequencies, some were not. The non-SMR frequencies, including Industrial/Business Pool frequencies, reverted back to the Commission and are available for licensing subject to the Commission's frequency coordination<sup>56</sup> and 800 MHz reconfiguration rules and procedures.<sup>57</sup>

22. Finally, we reject Applicants' argument that an evidentiary hearing under Section 309(e) of the Communications Act, as amended, is required in this proceeding. Under Section 309(e), when considering an application, if "a substantial and material question of fact is presented ... [the Commission] shall formally designate the application for hearing."<sup>58</sup> According to Applicants, the question in this case is not whether the revocation orders "preclude the ... applications," but whether consideration of the applications on their merits "would adversely affect the integrity of the Commission's licensing system."<sup>59</sup> We disagree.

23. Applicants argue, in particular, that an evidentiary hearing is needed to resolve questions of fact, including whether the scope of the sanctions imposed in the revocation proceedings should be extended to "future applications for new facilities."<sup>60</sup> Applicants further argue that a hearing is needed to determine whether the Commission's decision that Kay and Sobel lacked candor in the revocation proceedings is relevant to consideration of the applications.<sup>61</sup> As already explained, however, Commission rules – in particular Section 1.937 – preclude consideration of the applications as a matter of law. Contrary to Applicants' arguments, no substantial or material questions of fact are presented in this proceeding. We are not rejecting the applications based on the scope of sanctions imposed in the revocation proceedings. Nor are we basing our decision on any type of character inquiry.

24. Moreover, we find that designating these applications for an evidentiary hearing would frustrate the purpose of Section 1.937 and circumvent the Commission's decisions in the revocation proceedings by allowing Kay and Sobel to continue litigating matters already decided. As the Commission has previously stated, Section 1.937 was adopted "to aid the Commission in achieving sound administrative process by barring applicants from continuously relitigating matters already decided. This end could be too easily circumvented if a party, ... whose license had been revoked, was free to refile

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(...continued from previous page)

licensing records, and the EA licensee will be able to construct and operate without regard to that previous authorization").

<sup>55</sup> The Nextel of California, Inc. EA licenses are authorized in BEA 160 and include WPRQ226, WPRQ363, WPRQ495, WPRQ622, WPRQ749, and WPQZ882.

<sup>56</sup> 47 C.F.R. § 90.175.

<sup>57</sup> See In the Matter of Improving Public Safety Communications in the 800 MHz Band, *Report and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969 (2004); see also In the Matter of Improving Public Safety Communications in the 800 MHz Band, *Supplemental Order and Order on Reconsideration*, WT Docket No. 02-55, 19 FCC Rcd 25120 (2004); In the Matter of Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, WT Docket No. 02-55, 20 FCC Rcd 16015 (2005).

<sup>58</sup> 47 U.S.C. § 309(e).

<sup>59</sup> Opposition at 5.

<sup>60</sup> *Id.* at 5-6.

<sup>61</sup> *Id.* at 7. According to Applicants, the affidavit at issue in determining Kay and Sobel lacked candor was submitted to the Commission more than ten years before they filed the applications. *Id.*

immediately for substantially the same facilities.”<sup>62</sup> Not only did the Commission revoke all of Kay’s and Sobel’s 800 MHz licenses, the Commission dismissed and denied Sobel’s pending applications and finder’s preference requests for 800 MHz facilities. In 2010, in affirming the denial of the Motion to Modify Sanctions, the Commission explicitly directed the Enforcement Bureau to ensure Kay and Sobel were not operating on “their formerly licensed frequencies, and if the Bureau determines otherwise, to take immediate action, including forfeiture proceedings and/or proceedings to revoke any other licenses held by Kay or Sobel.”<sup>63</sup>

25. In this case, the Commission clearly intended, in its revocation proceedings, to deprive Kay and Sobel, at the time the applications at issue in this proceeding were filed, of the interests they held in the 800 MHz band, including licenses, applications, and finder’s preference requests. Nextel argues that granting the applications would effectively allow Kay and Sobel to retain authorizations to operate stations under the guise of add-on repeater stations “on the very 800 MHz channels and at the same locations” authorized under the revoked licenses, and that “[s]uch a result would make a nullity of the Commission’s lengthy revocation proceeding[s] and open the door for further litigation relating to the use of the subject 800 MHz channels.”<sup>64</sup> We agree. Grant of the applications would effectively allow Kay and Sobel to retain the licensing authority revoked by the Commission, nullify any intent to deter misconduct, and further litigate matters already well settled. Accordingly, we grant Nextel’s petition and dismiss the 113 applications filed by Comm Systems, MDS, Oak Lands, and Third District as defective.

#### IV. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309(d) and Sections 0.131, 0.331, and 1.939, of the Commission’s rules, 47 C.F.R. §§ 0.131, 0.331, 1.939, the Petition to Dismiss or Deny, filed by Nextel Communications, Inc. on June 2, 2005, IS GRANTED.

27. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.131, 0.331, 1.934, and 1.937 of the Commission’s rules, 47 C.F.R. §§ 0.131, 0.331, 1.934, 1.937, the applications File Nos. 0002144710, 0002145861, 0002145865, 0002145868, 0002145871, 0002145874, 0002145877, 0002145881, 0002145884, 0002145888, 0002145891, 0002145895, 0002145898, 0002145901, 0002145904, 0002145907, 0002145910, 0002145913, 0002145917, 0002145920, 0002146009, 0002146012, 0002146015, 0002146019, 0002146027, 0002146030, 0002146036, 0002146176, 0002146179, 0002146500, 0002146504 filed by Comm Systems, LLC on May 2 and 3, 2005, ARE DISMISSED as defective.

28. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.131, 0.331, 1.934, and 1.937 of the Commission’s rules, 47 C.F.R. §§ 0.131, 0.331, 1.934, 1.937, the applications File Nos. 0002151735, 0002151737, 0002151739, 0002151740, 0002151741, 0002151742, 0002151743,

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<sup>62</sup> *Section 1.937 Report and Order*, 18 FCC Rcd at 7192, ¶ 5 (stating that “the goal of Section 1.937 – the attainment of sound administrative process by preventing the relitigation of decided matters – would be easily circumvented if applicants were free to refile for the same relief immediately after being denied such relief”) (citing *Salter Broadcasting Co. et al., Memorandum Opinion and Order*, 6 F.C.C. 2d 809, 813, ¶ 10 (1967)).

<sup>63</sup> *June 2 Order*, 25 FCC Rcd at 7642, ¶ 10. In fact, the Commission stated that “[i]t is our understanding that in the five years since we ordered that their licenses be revoked, Kay and Sobel have continued to earn substantial license-related fees. That is enough of a windfall; this matter must now come to an end. Kay and Sobel forfeited their opportunity to hold the licenses at issue when they violated our rules, and it is high time that they face the consequences of their actions.” *Id.*

<sup>64</sup> Petition at 4.

0002151745, 0002151746, 0002151747, 0002151748, 0002151749, and 0002153150 filed by MDS Investments, Inc. on May 6 and 9, 2005, ARE DISMISSED as defective.

29. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.131, 0.331, 1.934, and 1.937 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.934, 1.937, the applications File Nos. 0002145862, 0002145866, 0002145869, 0002145872, 0002145875, 0002145879, 0002145882, 0002145885, 0002145889, 0002145892, 0002145896, 0002145899, 0002145902, 0002145905, 0002145908, 0002145911, 0002145914, 0002145918, 0002145921, 0002146010, 0002146013, 0002146017, 0002146020, 0002146022, 0002146028, 0002146032, 0002146037, 0002146177, 0002146180, 0002146501, and 0002146506 filed by Oak Lands Development, LLC on May 3, 2005, ARE DISMISSED as defective.

30. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.131, 0.331, 1.934, and 1.937 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.934, 1.937, the applications File Nos. 0002145864, 0002145867, 0002145870, 0002145873, 0002145876, 0002145880, 0002145883, 0002145886, 0002145890, 0002145894, 0002145897, 0002145900, 0002145903, 0002145906, 0002145909, 0002145912, 0002145915, 0002145919, 0002145923, 0002146011, 0002146014, 0002146018, 0002146021, 0002146023, 0002146029, 0002146035, 0002146038, 0002146178, 0002146181, 0002146503, and 0002146510 filed Third District Enterprises, LLC on May 3, 2005, ARE DISMISSED as defective.

31. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.131, 0.331, 1.934, and 1.937 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.934, 1.937, the applications File Nos. 0002181773 and 0002182415 filed by Comm Systems, LLC, the applications File Nos. 0002181774 and 0002182416 filed by Oak Lands Development, LLC, and the applications File Nos. 0002181776 and 0002182148 filed by Third District Enterprises, LLC on June 1, 2005, ARE DISMISSED as defective.

32. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.131, 0.331, 1.934, and 1.937 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.934, 1.937, the application File No. 0002286108 filed by Third District Enterprises, LLC on August 22, 2005, IS DISMISSED as defective.

FEDERAL COMMUNICATIONS COMMISSION

Cyndi Thomas  
Assistant Chief, Mobility Division  
Wireless Telecommunications Bureau

## ATTACHMENT

APPLICANT	FILE NO.	RS	FILED	REVOKED LICENSE	RS	FORMER LICENSEE
Comm Systems	0002144710	GB	5/2/05*	WNWK982	GX	James A. Kay, Jr.
Oak Lands	0002146022	GB	5/3/05	WNWK982	GX	James A. Kay, Jr.
Third District	0002146023	GB	5/3/05	WNWK982	GX	James A. Kay, Jr.
Comm Systems	0002145861	GB	5/3/05	WNVW779	GX	James A. Kay, Jr.
Oak Lands	0002145862	GB	5/3/05	WNVW779	GX	James A. Kay, Jr.
Third District	0002145864	GB	5/3/05	WNVW779	GX	James A. Kay, Jr.
Comm Systems	0002145865	GB	5/3/05	WNVL794	GX	James A. Kay, Jr.
Oak Lands	0002145866	GB	5/3/05	WNVL794	GX	James A. Kay, Jr.
Third District	0002145867	GB	5/3/05	WNVL794	GX	James A. Kay, Jr.
Comm Systems	0002145868	GB	5/3/05	WNIZ676	GX	James A. Kay, Jr.
Oak Lands	0002145869	GB	5/3/05	WNIZ676	GX	James A. Kay, Jr.
Third District	0002145870	GB	5/3/05	WNIZ676	GX	James A. Kay, Jr.
Comm Systems	0002145871	GB	5/3/05	WNWN703	GX	James A. Kay, Jr.
Oak Lands	0002145872	GB	5/3/05	WNWN703	GX	James A. Kay, Jr.
Third District	0002145873	GB	5/3/05	WNWN703	GX	James A. Kay, Jr.
Comm Systems	0002145874	GB	5/3/05	WNWQ651	GX	James A. Kay, Jr.
Oak Lands	0002145875	GB	5/3/05	WNWQ651	GX	James A. Kay, Jr.
Third District	0002145876	GB	5/3/05	WNWQ651	GX	James A. Kay, Jr.
Comm Systems	0002145877	GB	5/3/05	WNXG372	GX	James A. Kay, Jr.
Oak Lands	0002145879	GB	5/3/05	WNXG372	GX	James A. Kay, Jr.
Third District	0002145880	GB	5/3/05	WNXG372	GX	James A. Kay, Jr.
Comm Systems	0002145881	GB	5/3/05	WNXB280	GX	James A. Kay, Jr.
Oak Lands	0002145882	GB	5/3/05	WNXB280	GX	James A. Kay, Jr.
Third District	0002145883	GB	5/3/05	WNXB280	GX	James A. Kay, Jr.
Comm Systems	0002145884	GB	5/3/05	WNXQ911	GX	James A. Kay, Jr.
Oak Lands	0002145885	GB	5/3/05	WNXQ911	GX	James A. Kay, Jr.
Third District	0002145886	GB	5/3/05	WNXQ911	GX	James A. Kay, Jr.
Comm Systems	0002145888	GB	5/3/05	WNXS450	GX	James A. Kay, Jr.
Oak Lands	0002145889	GB	5/3/05	WNXS450	GX	James A. Kay, Jr.
Third District	0002145890	GB	5/3/05	WNXS450	GX	James A. Kay, Jr.
Comm Systems	0002145891	GB	5/3/05	WNXW280	GX	James A. Kay, Jr.
Oak Lands	0002145892	GB	5/3/05	WNXW280	GX	James A. Kay, Jr.
Third District	0002145894	GB	5/3/05	WNXW280	GX	James A. Kay, Jr.

\* Amended 5/9/05

## ATTACHMENT

APPLICANT	FILE NO.	RS	FILED	REVOKED LICENSE	RS	FORMER LICENSEE
Comm Systems	0002145895	GB	5/3/05	WNXW549	GX	James A. Kay, Jr.
Oak Lands	0002145896	GB	5/3/05	WNXW549	GX	James A. Kay, Jr.
Third District	0002145897	GB	5/3/05	WNXW549	GX	James A. Kay, Jr.
Comm Systems	0002145898	GB	5/3/05	WNYQ437	GX	James A. Kay, Jr.
Oak Lands	0002145899	GB	5/3/05	WNYQ437	GX	James A. Kay, Jr.
Third District	0002145900	GB	5/3/05	WNYQ437	GX	James A. Kay, Jr.
Comm Systems	0002145901	GB	5/3/05	WNYR747	GX	James A. Kay, Jr.
Oak Lands	0002145902	GB	5/3/05	WNYR747	GX	James A. Kay, Jr.
Third District	0002145903	GB	5/3/05	WNYR747	GX	James A. Kay, Jr.
Comm Systems	0002145904	GB	5/3/05	WNZY505	GX	James A. Kay, Jr.
Oak Lands	0002145905	GB	5/3/05	WNZY505	GX	James A. Kay, Jr.
Third District	0002145906	GB	5/3/05	WNZY505	GX	James A. Kay, Jr.
Comm Systems	0002145907	GB	5/3/05	WNZZ731	GX	James A. Kay, Jr.
Oak Lands	0002145908	GB	5/3/05	WNZZ731	GX	James A. Kay, Jr.
Third District	0002145909	GB	5/3/05	WNZZ731	GX	James A. Kay, Jr.
Comm Systems	0002145910	GB	5/3/05	WPAZ639	GX	James A. Kay, Jr.
Oak Lands	0002145911	GB	5/3/05	WPAZ639	GX	James A. Kay, Jr.
Third District	0002145912	GB	5/3/05	WPAZ639	GX	James A. Kay, Jr.
Comm Systems	0002145913	GB	5/3/05	WPBZ518	GX	James A. Kay, Jr.
Oak Lands	0002145914	GB	5/3/05	WPBZ518	GX	James A. Kay, Jr.
Third District	0002145915	GB	5/3/05	WPBZ518	GX	James A. Kay, Jr.
Comm Systems	0002145917	GB	5/3/05	WPAP683	GX	James A. Kay, Jr.
Oak Lands	0002145918	GB	5/3/05	WPAP683	GX	James A. Kay, Jr.
Third District	0002145919	GB	5/3/05	WPAP683	GX	James A. Kay, Jr.
Comm Systems	0002145920	GB	5/3/05	WPBW517	GX	James A. Kay, Jr.
Oak Lands	0002145921	GB	5/3/05	WPBW517	GX	James A. Kay, Jr.
Third District	0002145923	GB	5/3/05	WPBW517	GX	James A. Kay, Jr.
Comm Systems	0002146009	GB	5/3/05	WNMT755	GX	James A. Kay, Jr.
Oak Lands	0002146010	GB	5/3/05	WNMT755	GX	James A. Kay, Jr.
Third District	0002146011	GB	5/3/05	WNMT755	GX	James A. Kay, Jr.
Comm Systems	0002146012	GB	5/3/05	WNMY773	GX	James A. Kay, Jr.
Oak Lands	0002146013	GB	5/3/05	WNMY773	GX	James A. Kay, Jr.
Third District	0002146014	GB	5/3/05	WNMY773	GX	James A. Kay, Jr.
Comm Systems	0002146015	GB	5/3/05	WNWB332	GX	James A. Kay, Jr.
Oak Lands	0002146017	GB	5/3/05	WNWB332	GX	James A. Kay, Jr.
Third District	0002146018	GB	5/3/05	WNWB332	GX	James A. Kay, Jr.

## ATTACHMENT

APPLICANT	FILE NO.	RS	FILED	REVOKED LICENSE	RS	FORMER LICENSEE
Comm Systems	0002146019	GB	5/3/05	WNXS753	GX	James A. Kay, Jr.
Oak Lands	0002146020	GB	5/3/05	WNXS753	GX	James A. Kay, Jr.
Third District	0002146021	GB	5/3/05	WNXS753	GX	James A. Kay, Jr.
Comm Systems	0002146027	YB	5/3/05*	WNKV762	YX	James A. Kay, Jr.
Oak Lands	0002146028	YB	5/3/05*	WNKV762	YX	James A. Kay, Jr.
Third District	0002146029	YB	5/3/05*	WNKV762	YX	James A. Kay, Jr.
Comm Systems	0002146030	YB	5/3/05*	WNXW327	YX	James A. Kay, Jr.
Oak Lands	0002146032	YB	5/3/05*	WNXW327	YX	James A. Kay, Jr.
Third District	0002146035	YB	5/3/05*	WNXW327	YX	James A. Kay, Jr.
Comm Systems	0002146036	YB	5/3/05*	WNPJ874	YX	James A. Kay, Jr.
Oak Lands	0002146037	YB	5/3/05*	WNPJ874	YX	James A. Kay, Jr.
Third District	0002146038	YB	5/3/05*	WNPJ874	YX	James A. Kay, Jr.
Comm Systems	0002146176	GB	5/3/05	WNWB268	GX	James A. Kay, Jr.
Oak Lands	0002146177	GB	5/3/05	WNWB268	GX	James A. Kay, Jr.
Third District	0002146178	GB	5/3/05	WNWB268	GX	James A. Kay, Jr.
Comm Systems	0002146179	GB	5/3/05	WNXQ353	GX	James A. Kay, Jr.
Oak Lands	0002146180	GB	5/3/05	WNXQ353	GX	James A. Kay, Jr.
Third District	0002146181	GB	5/3/05	WNXQ353	GX	James A. Kay, Jr.
Comm Systems	0002146500	YB	5/3/05*	WNSK552	YX	James A. Kay, Jr.
Oak Lands	0002146501	YB	5/3/05*	WNSK552	YX	James A. Kay, Jr.
Third District	0002146503	YB	5/3/05*	WNSK552	YX	James A. Kay, Jr.
Comm Systems	0002146504	YB	5/3/05*	WNMY402	YX	James A. Kay, Jr.
Oak Lands	0002146506	YB	5/3/05*	WNMY402	YX	James A. Kay, Jr.
Third District	0002146510	YB	5/3/05*	WNMY402	YX	James A. Kay, Jr.
Comm Systems	0002181773	YB	6/1/05	WNJL306	YX	James A. Kay, Jr.
Oak Lands	0002181774	YB	6/1/05	WNJL306	YX	James A. Kay, Jr.
Third District	0002181776	YB	6/1/05	WNJL306	YX	James A. Kay, Jr.
Comm Systems	0002182415	YB	6/1/05**	WNJA910#	YX	James A. Kay, Jr.
Oak Lands	0002182416	YB	6/1/05**	WNJA910#	YX	James A. Kay, Jr.
Third District	0002182148	YB	6/1/05**	WNJA910	YX	James A. Kay, Jr.
Third District	0002286108	YB	8/22/05	Several		James A. Kay, Jr.

\* Amended 6/1/05; \*\* Amended 8/21/06; # The public interest statement included with these applications states that the applications are functionally integrated with Station WNWK982, a conventional 800 MHz SMR station (GX). Because the applications are identical to Third District's application, File No. 0002182148, and based on the technical information included in each of the three applications, we believe Comm Systems and Oak Lands intended to state the applications, File Nos. 0002182415 and 0002182416, are functionally integrated with Station WNJA910.

## ATTACHMENT

APPLICANT	FILE NO.	RS	FILED	REVOKED LICENSE	RS	FORMER LICENSEE
MDS Investments	0002151735	GB	5/6/05	KNBT299	GX	MS Airwaves, Inc.
MDS Investments	0002151737	GB	5/6/05	WNPY680	GX	MS Airwaves, Inc.
MDS Investments	0002151739	GB	5/6/05	WNWB334	GX	MS Airwaves, Inc.
MDS Investments	0002151740	GB	5/6/05	WNXL471	GX	MS Airwaves, Inc.
MDS Investments	0002151741	GB	5/6/05	WNYR424	GX	MS Airwaves, Inc.
MDS Investments	0002151742	GB	5/6/05	WPAD685	GX	MS Airwaves, Inc.
MDS Investments	0002151743	GB	5/6/05	WPCA891	GX	MS Airwaves, Inc.
MDS Investments	0002151745	GB	5/6/05	WPCG780	GX	MS Airwaves, Inc.
MDS Investments	0002151746	GB	5/6/05	WPCZ354	GX	MS Airwaves, Inc.
MDS Investments	0002151747	GB	5/6/05	WPFH460	GX	MS Airwaves, Inc.
MDS Investments	0002151748	GB	5/6/05	WPF529	GX	MS Airwaves, Inc.
MDS Investments	0002151749	GB	5/6/05	WPDB603	GX	MS Airwaves, Inc.
MDS Investments	0002153150	GB	5/9/05	KRU576	GX	MS Airwaves, Inc.